

DEPARTMENT OF STATE REVENUE
LETTER OF FINDINGS NUMBER 97-0395 ST
SALES AND USE TAX

For Tax Periods: 1993 Through 1996

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Issues

1. Sales and Use Tax- Installation

Authority: IC 6-2.5-2-1, IC 6-2.5-4-1, IC 6-2.5-1-2, IC 6-26-1-401(2), IC 6-2.5-9-4,

Taxpayer protests the assessment of tax on its installations of satellites and other electronic equipment.

2. Tax Administration-Negligence Penalty

Authority: IC 6-8.1-10-2 (a).

Taxpayer protest the assessment of the negligence penalty.

Statement of Facts

Taxpayer is a retailer and installer of satellite systems, television antennas, televisions, ranges, refrigerators, freezers, dishwashers, washers and dryers. Taxpayer also repairs satellite systems and electronic equipment. After an audit, the Department assessed additional sales and use tax, interest and penalties for the tax period 1993-1996. Taxpayer timely protested the sales tax portion of the assessment. Further facts will be provided as necessary.

1. Sales and Use Tax- Installation

Discussion

Retail transactions made in Indiana are subject to sales tax. IC 6-2.5-2-1. A retail transaction is defined generally as the acquiring and subsequently selling of tangible personal property. IC 6-2.5-4-1. Except for certain enumerated services, sales of services are generally not retail transactions and are not subject to sales tax. There are two instances when an otherwise nontaxable sale of a service is subject to sales tax. The first is when the services are performed with respect to tangible personal property being transferred in a retail transaction and the services take place prior to the transfer of the tangible personal property. IC 6-2.5-4-1(e). The second is when the services are part of a retail unitary transaction. IC 6-2.5-1-2.

The taxpayer in this case sold and installed satellites and other electronic equipment. The taxpayer installed the satellites and other electronic appliances after delivery to the purchaser. As explained above, charges for services performed with respect to tangible personal property are subject to sales tax if the services are performed prior to transfer of the property. Pursuant to the commercial law of Indiana, absent an explicit agreement to the contrary, transfer is presumed to take place upon physical delivery of the property. IC 26-1-2-401(2). The installation in this case takes place after the satellites and other electronic equipment have been delivered to the purchaser's location. In the absence of an explicit agreement between the taxpayer and its customers to the contrary, the transfer takes place prior to installation. There is no evidence of an explicit agreement that the transfer takes place after delivery. Therefore the installation or service fee is not subject to sales tax due to the first possible exception to the general rule that service fees are not subject to sales tax.

A unitary transaction is defined as a transaction that includes the transfer of tangible personal property and the provision of services for a single charge pursuant to a single agreement or order. IC 6-2.5-1-1. There are several indications in the taxpayer's situation to indicate that both the taxpayer and its customers considered the sales of the satellite or other electronic equipment as one transaction and the installation as a second transaction. Taxpayer produced letters from several customers indicating that the customers considered the two transactions to be separate agreements. Taxpayer separately itemized the sale of the tangible personal property and the installation service on its invoices. Taxpayer's invoices clearly show that sales tax was assessed on the sale of the tangible personal property. Taxpayer sold satellites to some customers and did not provide the service of installation. These facts clearly demonstrate that in this case the tangible personal property and the provision of services were not pursuant to a single agreement or order. Therefore the installation or service fee is not subject to sales tax due to the second exception to the general rule that service fees are not subject to sales tax.

Finding

Taxpayer's protest is sustained.

2. Tax Administration- Negligence Penalty

Discussion

Taxpayer also protests the imposition of the negligence penalty pursuant to IC 6-8.1-10-2 (a), which states as follows:

If a person fails to . . . pay the full amount of tax shown on his return on or before the due date for the return or payment, incurs, upon examination by the department, a deficiency which is due to negligence, . . . the person is subject to a penalty.

In this case, evidence indicates that Taxpayer failed to set up a system to differentiate nontaxable purchases from clearly taxable purchases such as glue and a boat from a hobby store and soft drinks.

Finding

Taxpayer's protest to the imposition of the negligence penalty is denied.